

ATTORNEY GENERAL[61]

Adopted and Filed

Pursuant to the authority of Iowa Code section 6B.2A(1)“f,” the Attorney General hereby amends Chapter 34, “Acquisition Negotiation Statement of Rights,” Iowa Administrative Code.

These amendments remove outdated references to a 1999 session law, remove a provision that implemented a statutory provision that has now been repealed, add a provision as described below, and make a clarification and editorial enhancement to one other provision.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2877C** on January 4, 2017.

The Iowa Farm Bureau Federation suggested the addition of a provision advising property owners of their right to seek advice from their own legal counsel and to challenge the exercise of eminent domain authority or the condemnation proceedings in court. An addition along these lines is included in the adopted amendments, with provisions renumbered as appropriate.

No other comments were received from the public. Except as noted above, these amendments are identical to those published under Notice.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code section 6B.2A(1)“f.”

These amendments will become effective April 19, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 61—34.1(78GA,HF476) as follows:

61—34.1(78GA,HF476 6B) Statement of property owner’s rights. ~~1999 Iowa Acts, House File 476, section 3,~~ Iowa Code section 6B.2A(1) mandates that an acquiring agency provide a statement of rights to owners of record who may have all or a part of their property acquired by condemnation. It also directs the attorney general to adopt rules prescribing a statement of rights which an acquiring agency may use to meet its obligation. Pursuant to that directive, the following statement of property owner’s rights is adopted:

STATEMENT OF PROPERTY OWNER’S RIGHTS

Just as the law grants certain entities the right to acquire private property, you as the owner of the property have certain rights. You have the right to:

1. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)
2. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code section ~~6B.45 as amended by 1999 Iowa Acts, House File 476, section 18;~~ Iowa Code section ~~6B.54 as amended by 1999 Iowa Acts, House File 476, section 20~~ 6B.54(3))
3. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency’s determination of just compensation is based not less than ten days before being contacted by the acquiring agency’s acquisition agent. (Iowa Code section 6B.45 ~~as amended by 1999 Iowa Acts, House File 476, section 18~~)
4. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code section ~~6B.54~~ 6B.54(2))
5. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (~~1999 Iowa Acts, House File 476, section 3~~ Iowa Code section 6B.2B)
6. Retain legal counsel of your choosing at your expense for the purpose of bringing a court action to challenge the exercise of eminent domain authority or the condemnation proceedings in accordance with the provisions of law. (Iowa Code section 6B.3A; Iowa Code section 6A.24)

~~6- 7.~~ A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring

agency. (Iowa Code section 6B.4; Iowa Code section 6B.7 as amended by 1999 Iowa Acts, House File 476, section 8; Iowa Code section 6B.18)

~~7. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (1999 Iowa Acts, House File 476, section 7)~~

8. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code section 6B.25; Iowa Code section 6B.26; Iowa Code section 6B.54(11))

9. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code section 6B.33 as amended by 1999 Iowa Acts, House File 476, section 15; Iowa Code section 6B.54(10))

10. Reimbursement of certain litigation expenses: (a) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (b) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code section 6B.33)

11. At To the greatest extent practicable, be provided at least 90 days' written notice to vacate occupied property prior to construction or development of a public improvement. (Iowa Code section 6B.54(4))

12. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Iowa Code section 316.9; Iowa Code section 6B.42 as amended by 1999 Iowa Acts, House File 476, section 17)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

ITEM 2. Amend rule 61—34.2(78GA,HF476) as follows:

~~61—34.2(78GA,HF476 6B)~~ Alternate statement of rights. Rule 61—34.1(~~78GA,HF476 6B~~) is not intended to prohibit acquiring agencies from providing a statement of rights in a different form, a more detailed statement of rights, or supplementary material expanding upon an owner's rights.

ITEM 3. Amend **61—Chapter 34**, implementation sentence, as follows:

These rules are intended to implement ~~1999 Iowa Acts, House File 476, section 3~~ Iowa Code section 6B.2A(1).

[Filed 2/23/17, effective 4/19/17]

[Published 3/15/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/15/17.